

4. The Examiner has stated:

"2. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-14, drawn to a method, classified in class 376, subclass 100.

II. Claims 15-20, drawn to an apparatus, classified in class 376, subclass 108.

The inventions are distinct, each from the other because:

Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus as claimed can be practiced by another and materially different process such as a process wherein the two electric fields are applied simultaneously. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, and because the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143)."

Applicant elects "Claims 1-14, drawn to a method, classified in class 376, subclass 100".

This election fully complies with Examiner's request.

5. The Examiner has stated:

"3. Upon election of one of the inventions identified above as I and II, applicant is further required under 35 U.S.C. 121 to elect one of the following disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable:

- A. Wherein the isotopic fuel consist of an isotope of hydrogen.*
- B. Wherein the isotopic fuel is an isotope of boron.*
- C. Wherein the isotopic fuel is an isotope of lithium.*
- D. Wherein the isotopic fuel is an isotope of potassium."*

The Applicant, in response to Mr. Behrend's comments above, is electing A, "an isotope of hydrogen". This election fully complies with Examiner's request. This reads on all claims, now Claims 1-14.

6. The Examiner has stated:

"4. Upon election of one of the species identified above as A-D, applicant is further required under 35 U.S.C. 121 to elect one of the following disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable:

L. Wherein the material is palladium.

M. Wherein the material is titanium.

N. Wherein the material is nickel."

Examiner Behrend's request for election of "one of the following disclosed species" may not be proper for any of several reasons.

A. First, this description by the Examiner is indefinite. Applicant respectfully requests clarification.

B. Second, the Examiner's request or election of "one of the following disclosed species" may not be proper in light of MPEP §808.01(a). Depending on what the Examiner means, -- and at this point the Examiner is indefinite, there may be no "patentable difference" between said different "one of the following disclosed species".

"Election of species should not be required if the species claimed are considered clearly unpatentable over each other." [MPEP §808.01(a)]

D. Third, the Examiner's request or election of disclosed species may not proper in light of 35 USC §121 because depending on what the Examiner means, the inventions may be related, and such related inventions are not patentably distinct. Therefore, the Examiner's indefinite statement is not proper under 35 USC §121.

E. Fourth, the Examiner's request or election of a "a single specie of metal" is not proper in light of MPEP 808.02 because the Examiner has not established reasons for insisting upon his latest restriction.

"Where the related inventions as claimed are shown to be distinct...the examiner, in order to establish reasons for insisting upon restriction, must show by appropriate explanation one of the following: (A) separate classification thereof; (B) a separate status in the art when they are classifiable together; (C) a different field of search"

"Where, as disclosed in the application, the several inventions claimed are related, and such related inventions are not patentably distinct as claimed, restriction under 35 USC §121 is never proper. If applicant optionally restricts, double patenting may be held." [MPEP §808.02]

Applicant does not want to be pushed into double patenting, and has pointed to indefiniteness in the Examiner's request for election of "one of the following disclosed species", and thus has presented several reasons why the requirement should be withdrawn or modified.

Therefore, Applicant requests reconsideration and withdrawal of the request for election of "one of the following disclosed species" for the above reasons. Applicant hereby preserves the Right of Petition.

If the Examiner refuses reconsideration, Applicant elects "palladium", "L", and for this to read on all claims, now Claims 1-14.

This election fully complies with Examiner's request


APPLICANT REQUESTS SUGGESTIONS

7. Applicant requests constructive assistance and suggestions from the Examiner in drafting one or more acceptable claims [pursuant to MPEP 707.07(j)] and in making constructive suggestions [pursuant to MPEP 706.03(d)].

8. Applicant notes that the U.S. Supreme Court has ruled that any *pro se* litigant is entitled to less stringent standards [U.S. Rep volume 404, pages 520-521 (72)].

Respectfully,

January 10, 2002


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Certificate Of Mailing [37 CFR 1.8(a)]

January 10, 2002

To Whom it Does Concern:

I hereby certify that this correspondence will be deposited with the United States Postal Service by First Class Mail, postage prepaid, in an envelope addressed to

"The Commissioner of Patents and Trademarks
 Washington, D.C. 20231" on the date below.

Thank you.

Sincerely,

January 10, 2002

M.R. Swartz